



MEMORANDUM

Agenda Item 15(B)3

TO: Honorable Chairman Joe A. Martinez and
Members, Board of County Commissioners

DATE: March 7, 2006

FROM: Honorable Harvey Ruvin, Clerk
Circuit and County Courts

SUBJECT: Resolution No. 2005-26103
City of Miami Beach

Kay Sullivan, Director
Clerk of the Board Division

Attached for your information is a copy of Resolution No. 2006-26103 of the Mayor and City Commission of the City of Miami Beach, Florida, resolving that, pursuant to Sec. 21-279(b), Miami-Dade County Code of Ordinances, the provisions of Miami-Dade County Ordinance No. 05-206 do not apply within the jurisdiction of the City of Miami Beach; further directing the City Clerk to provide a copy of this Resolution to the Clerk of the Board of County Commissioners immediately upon approval; setting an effective date.

KS:fed
Attachment



MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

Office of the City Clerk
Tel: 305-673-7411, Fax: 305-673-7254

February 9, 2006

Kay Sullivan, Director
Clerk of the Board of County Commissioners
111 N.W. 1st Street, Room 17-202
Miami, FL 33128

Sent via Fax # 305-375-2484

Re: Transmittal of Resolution No. 2006-26103 adopted by the Miami Beach Commission on February 8, 2006.

Dear Ms. Sullivan:

Pursuant to Sec. 21-279(B), Miami-Dade County Code of Ordinances, that the provisions of Miami-Dade County Ordinance No. 05-206 do not apply within the Jurisdiction of the City Of Miami Beach; further directing the City Clerk to provide a copy of this resolution to the Clerk of the Board of County Commissioners immediately upon approval.

This letter and attached resolution is being transmitted via facsimile and a certified copy of the resolution will be mailed.

Please confirm receipt of this correspondence to Lillian Beauchamp via facsimile, at 305-673-7254 or email at lillianbeauchamp@miamibeachfl.gov

Please advise if I need to take any further action.

Thank you.

Sincerely,


Robert Parcher
City Clerk

RP:lb

C: Mayor Dermer
Vice-Mayor Steinberg
Commissioner Bower
Commissioner Cruz
Commissioner Garcia
Commissioner Gross
Commissioner Libbin
Hilda Fernandez, Assistant City Manager
Harvey Ruvin, Clerk of the Courts, via fax # 305-349-7403

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We are committed to providing excellent public service and safety to all who live, work, and play in our vibrant, tropical, historic community.

CLERK OF THE BOARD
2006 FEB 10 PM 12:04
CLERK, CIRCUIT & COUNTY COURTS
DADE COUNTY, FLA.
#1

RESOLUTION NO. 2006-26103

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, RESOLVING THAT, PURSUANT TO SEC. 21-279(b), MIAMI-DADE COUNTY CODE OF ORDINANCES, THE PROVISIONS OF MIAMI-DADE COUNTY ORDINANCE NO. 05-206 DO NOT APPLY WITHIN THE JURISDICTION OF THE CITY OF MIAMI BEACH; FURTHER DIRECTING THE CITY CLERK TO PROVIDE A COPY OF THIS RESOLUTION TO THE CLERK OF THE BOARD OF COUNTY COMMISSIONERS IMMEDIATELY UPON APPROVAL; SETTING AN EFFECTIVE DATE.

WHEREAS, on November 15, 2005, the Miami-Dade Board of County Commissioners approved Ordinance No. 05-206, also known as "The Miami-Dade County Sexual Offender and Sexual Predator Ordinance," (the "County Ordinance") pertaining to Chapter 21 of the Code of Miami-Dade County entitled "Offenses and Miscellaneous Provisions; and

WHEREAS, Ordinance No. 05-206 created Article XVII, prohibiting sexual offenders and sexual predators convicted of certain crimes from living within 2,500 feet of specified locations within Miami-Dade County; and

WHEREAS, Sec. 21-279(b), Miami-Dade County Code of Ordinances, provides that, within ninety (90) days after the effective date of the County Ordinance (the "Opt-Out Provision"), a municipality may adopt a resolution providing that the County Ordinance shall not apply in said municipality; and

WHEREAS, the effective date of the County Ordinance is November 25, 2005; and

WHEREAS, the "Opt-Out Provision" is available to municipalities until February 25, 2006; and

WHEREAS, on June 8, 2005, the Miami Beach City Commission adopted Ordinance No. 2005-3485, (the "City Ordinance"), amending Chapter 70 of the Miami Beach City Code, creating Article VI, entitled "Sexual Offenders and Sexual Predators"; and

WHEREAS, there are differences between the County Ordinance and the City Ordinance; and

WHEREAS, in instances where the provisions of the County Ordinance are more restrictive, the County Ordinance would apply, and in instances where the provisions of the City Ordinance are more restrictive, the City Ordinance would apply; and

WHEREAS, the applicability of two separate ordinances dealing with the same subject has the potential of creating confusion with the administration and enforcement of the ordinance.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA,

Section One: That pursuant to Sec. 21-279(b), Miami-Dade County Code of Ordinances, the provisions of Miami-Dade County Ordinance 05-206 shall not apply within the jurisdiction of the City of Miami Beach; and further directing that the City Clerk provide a copy of this Resolution to the Clerk of the Board of County Commissioners immediately upon approval.

Section Two: This Resolution shall take effect upon adoption.

PASSED and ADOPTED this 8th day of February, 2006

ATTEST:

Robert Parcher
CITY CLERK
Robert Parcher

David Dermer
MAYOR
David Dermer

T:\AGENDA\2006\feb0806\Regular\Secual Predator Opt Out.doc

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

My Adull 2-1-06
City Attorney Date

I do hereby certify that the above
and foregoing is a true and correct
copy of the original thereof
on file in this office.

WITNESS my hand and seal of said CITY
this 10th day of February, D.2006
CITY CLERK of the City
of Miami Beach, Florida
BY Lillian Beauchamp
DEPUTY CLERK

Condensed Title:

A Resolution exempting the City of Miami Beach from the provision of Miami-Dade County Ordinance 05-206, entitled "The Miami-Dade County Sexual Offender and Sexual Predator Ordinance."

Key Intended Outcome Supported:

Maintain crime rates at or below national trends.

Issue:

Shall the City "opt-out" of the County's Sexual Predator Ordinance, since there is already an existing City Sexual Predator Ordinance?

Item Summary/Recommendation:

On November 15, 2005, the Miami-Dade Board of County Commissioners adopted Ordinance No. 05-206, prohibiting sexual offenders and sexual predators convicted of certain crimes from living within 2,500 feet of specified locations within Miami-Dade County.

On June 8, 2005, the City of Miami Beach adopted Ordinance No. 2005-3485, prohibiting sexual offenders and sexual predators convicted of certain crimes from living within 2,500 feet of specified locations within the City of Miami Beach.

Since there are differences between the County Ordinance and the City Ordinance, the applicability of two separate ordinances has the potential to create confusion in the administration and enforcement of the ordinances. The County Ordinance provides a 90-day window for a municipality to "opt-out" of the County Ordinance.

Advisory Board Recommendation:

The Neighborhoods/Community Affairs Committee considered the item at its February 2, 2006 meeting and recommended that the City "opt out" of the applicability of the County Ordinance.

Financial Information:

Source of Funds:	Amount	Account	Approved
1			
2			
3			
4			
Total			

OBPI

Financial Impact Summary:

City Clerk's Office Legislative Tracking:

Kevin Crowder, Economic Development

Sign-Offs:

Department Director	Assistant City Manager	City Manager
	<i>[Signature]</i>	<i>[Signature]</i>



MIAMI BEACH

AGENDA ITEM R7C
DATE 2-8-06



MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMISSION MEMORANDUM

TO: Mayor David Dermer and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: February 8, 2006

SUBJECT: **RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, RESOLVING THAT, PURSUANT TO SEC. 21-279(b), MIAMI-DADE COUNTY CODE OF ORDINANCES, THE PROVISIONS OF MIAMI-DADE COUNTY ORDINANCE NO. 05-206 DO NOT APPLY WITHIN THE JURISDICTION OF THE CITY OF MIAMI BEACH; FURTHER DIRECTING THE CITY CLERK TO PROVIDE A COPY OF THIS RESOLUTION TO THE CLERK OF THE BOARD OF COUNTY COMMISSIONERS IMMEDIATELY UPON APPROVAL; SETTING AN EFFECTIVE DATE.**

ADMINISTRATIVE RECOMMENDATION

Adopt the resolution.

BACKGROUND

As you may be aware, last November the Miami-Dade County Board of Commissioners approved the Miami-Dade County Sexual Offender and Sexual Predator Ordinance (#05-206). Included within its enabling legislation were provisions for local municipalities to opt out of the requirements of this new ordinance. Such decision by a local municipality is to be made within 90 days of the implementation of the ordinance, which is 90 days from November 25, 2005 or February 25, 2006.

In reviewing the ordinance, City Attorney Murray Dubbin has opined that there are similarities and distinctions between the County's new ordinance and the groundbreaking legislation approved by the Miami Beach City Commission on June 8, 2005. A copy of this analysis is attached for your reference. In some instances, provisions of the City's ordinance are more restrictive than provisions included in the County's new ordinance. The same applies for certain requirements of the County's ordinance.

ANALYSIS

The City of Miami Beach was a leader in developing this type of legislation. The City's ordinance served as a blueprint for many other jurisdictions in developing similar legislation. The City's ordinance was a product of community input and discourse. It effectively established measures to ensure the safety of our residents and community without creating

undue or unnecessary burdens. Currently, the City retains the flexibility to adjust or amend its ordinance to respond to our unique local needs or trends. This level of flexibility would not be possible with the adoption of a County ordinance, as amendments of a County ordinance would require requisite approvals of the County Commission and require some broader, more County-wide implications. However, the current City ordinance could be amended to incorporate elements of the County's ordinance, as may be desired.

At its meeting of February 2, 2006, the Neighborhoods/Community Affairs Committee recommended that the City exercise its option to opt out of the provisions of County ordinance No. 05-206.

CONCLUSION

At this time it is recommended that the City of Miami Beach exercise its option to opt out of the provisions of County ordinance 05-206 Sexual Offenders and Sexual Predators by approving this resolution.

HMF: ah
Attachment

cc: Murray Dubbin, City Attorney

T:\AGENDA\2006\feb0806\Regular\Sexual Predators Sexual Offenders Comm Memo.doc

ATTACHMENT

CITY OF MIAMI BEACH
CITY ATTORNEY'S OFFICERECEIVED TO 11:50
MAY 10 2006

TO: Commissioner Saul Gross

FROM: Murray H. Dublin
City Attorney *M. H. Dublin*

DATE: December 15, 2005

SUBJECT: Rental to Sexual Predators - County and City Ordinances

Since you have expressed an interest in the application of the above Ordinances, I have done a little more comparative review of the two and have the following comments.

The County Ordinance (County) to a major extent tracks the language of the Miami Beach Ordinance (City). It differs in the following respects:

- 1) The County goes into greater detail in defining "child care facility", "conviction" and a number of other terms (Section 21-280). This is neither more nor less restrictive, it is simply more detailed than the City Ordinance.
- 2) The County targets only "schools" for separation purposes (Section 21-281 [a]), whereas the City targets a "school, designated school bus stop, day care center, park, playground or other place where children regularly congregate" (Section 70-402 [a]). Thus, I consider the City's Ordinance more restrictive in this regard.
- 3) The County provides a penalty of up to \$1,000 and/or imprisonment for up to 364 days for violation (Section 21-281 [c]), whereas the City provides for a fine of up to \$500 or imprisonment for up to 60 days for a first offense, the second offense would be the equivalent of the County's. Accordingly, the County's penalty for first offense is more stringent and, therefore, more restrictive.
- 4) The County removes from the definition of residence, an offender's residence in an illegal multi-family apartment unit within a single family neighborhood, (Section 21-282 [a]). The City makes no such exception and, therefore, the City's code is more restrictive.
- 5) The County defines "knowingly renting" to include, but not be limited to renting after being notified that the prospective renter is a sexual offender (Section 21-283 [a]). The City does not have such a definition. The County is neither more nor less restrictive in this regard.

- 6) The County establishes a mandatory procedure for an owner/lessor to determine whether a prospective renter is a registered sexual offender (Section 21-283 [b]). The City has no such provision. In this case, I would consider the County to be more restrictive in that the provision is mandatory upon a landlord and, therefore, would apply to rentals in the City. I believe the City Police Department has the ability to assist in the compliance with this Section.
- 7) The County provides a penalty on the landlord who violates Section 21-283 (a), namely: \$500 or 60 days, or both, for a first offense and \$1,000 or 364 days for a second offense. (Section 21-283 [c]). Miami Beach only provides for a code violation for a landlord failing to comply. Therefore, I would consider the County provision more stringent and, therefore, more restrictive.
- 8) The County has a separate section prohibiting a sexual offender or sexual predator from knowingly being present in a County or municipal park when an unescorted child under 16 is present (Section 21-284 [a]). The County requires signage at the entrance to the Park notifying the public of the prohibition (Section 21-284 [b]) and also prohibits said offender from being present in a child care facility, with some exceptions (Section 21-284 [c]). The Section also sets penalties of a fine of up to \$500 and/or imprisonment up to 60 days, for the first offense. A second offense increases the penalty to up to \$1,000 and/or up to 364 days.

The City has no such provision and, therefore, this Section would be mandatory on the City.

As provided in the County Code where the provisions of the County Ordinance are more restrictive, the County Ordinance would apply. Where the City Code is more restrictive, the City Code would apply.

If the County Ordinance creates confusion in the administration of the Ordinance, the City has the option of opting out. We may also want to examine the County Ordinance with a view of adopting some of its provisions, particularly as the details it sets forth. However, the City Ordinance affects more locations and is, therefore, more restrictive as to that aspect and is the law of the City.

I hope that this will be of some help.

MHD:lm

cc: City Manager Jorge M. Gonzalez
Gary Held, First Assistant City Attorney
Jorge Gomez, Planning Director